No. 10187

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JULIA C. COLLINS and HATTIE L. MOSHER,

Appellants,

vs.

JOE O'CONNELL and JESSIE B. O'CONNELL, husband and wife,

Appellees.

APPELLEES' BRIEF

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INDEX

CASES CITED

CASES CITED—(Continued)

STATUTES AND TEXTS APPLICABLE

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On Appeal from the District Court of the United States for the District of Arizona

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I.

STATEMENT OF JURISDICTION

Appellee admits the Statement of Facts as to jurisdiction, found on pages 1 and 2 of appellants' opening brief.

II.

STATEMENT OF FACTS

(Figures in parenthesis refer to page number of the Transcript of Record).

Appellees brought this suit to quiet their title against the appellants to Lot 2 in Block 3, Churchill Addition, an Addition to the City of Phoenix, Maricopa County, Arizona. (2). The facts out of which the dispute as to the title arises are the following: On February 24, 1913, J. Gerard, a widow, was the owner of said premises, (2, 9, 30), and conveyed the same to Greene and Griffin Real Estate and Investment Company, (2, 10, 30). On the same date, Greene and Griffin Real Estate and Investment Company, a corporation, gave a mortgage to J. Gerard, for the sum of $9,000.00, on Lots 1 and 2, Block 3, in said Churchill Addition. (33, 172, 177). On July 1st, 1914, said Greene and Griffin Real Estate and Investment Company, conveyed said premises by Warranty Deed to Hattie L. Mosher, a widow. (3, 10, 31). On October 7, 1918, Hattie L. Mosher and J. Gerard entered into an agreement extending the time for the payment of said mortgage, (33, 178), which, according to its terms, was payable on or before three years after date, in the following language:

> "AND, WHEREAS, said promissory note has not been paid and the said J. Gerard, mortgagee, and holder of said note, agrees to extend the time of payment thereof up to and until the 24th day of February, 1928.
>
> NOW, THEREFORE, in consideration of said extension, said Hattie L. Mosher agrees to pay said promissory note with the specified rate of interest thereon on the 24th day of February, 1928." (180).

Said extension agreement, while dated October 7, 1918, (180) was not acknowledged until the 7th day of October, 1919, (181), and was recorded on October 9, 1919. (181). On October 7, 1919, J. Gerard assigned said mortgage, together with the note therein described, to Julia Mosher Collins, daughter of Hattie L. Mosher. (181-183).

On March 1, 1920, Julia Mosher Collins assigned said mortgage to James Dean Collins, commonly known as Dean Collins, husband of assignor. Said assignment recited a consideration of $9,000.00, (183), being the principal amount of the mortgage and is signed, "Julia Mosher Collins, by Hattie L. Mosher, her attorney-in-fact". The assignment was acknowledged March 1, 1920, before J. B. Woodward, a Notary Public, for Maricopa County, Arizona, (184), and was filed and recorded at the request of Hattie Mosher on April 18, 1921, in Book 8 of Assignments of Mortgages, pages 372-3, in the office of the County Recorder of Maricopa County, Arizona. (185). Said Assignment of Mortgage appears to have been executed by Hattie L. Mosher under a power of attorney executed by Julia Winifred Mosher Collins, on the 20th day of July, 1915, (185-188). Said power of attorney recites, "Julia Winifred Mosher Collins was, until September 16, 1914, Julia Winifred Mosher", (185), and was acknowledged before a Notary Public in Multnomah County, Oregon, on July 20, 1915, (187), and recorded at the request of Hattie L. Mosher on April 2, 1921, in Book 5 of Powers of Attorney, page 141-2, (188), in the office of the County Recorder of Maricopa County, Arizona.

On April 11, 1921, James Dean Collins, assignee in the above mentioned assignment, executed a partial Satisfaction of Mortgage, releasing Lot 2, Block 3,

Churchill Addition, being the lot involved in this litigation from the above mentioned mortgage, (188-189). Said partial release was acknowledged before a Notary Public in Multnomah County, Oregon, on April 11, 1921, and recorded at the request of Hattie L. Mosher, on April 18, 1921, in Book 21 of Releases of Mortgages, page 101, in the office of the County Recorder of Maricopa County, Arizona. (189).

On March 31, 1926, James Dean Collins and Hattie L. Mosher entered into an agreement extending the time for the payment of said mortgage until the 31st day of March, 1929; said assignment was acknowledged by Hattie L. Mosher before J. J. Barkley, Notary Public, in Maricopa County, Arizona, on April 1, 1926, and was acknowledged by James Dean Collins before Alexander Hamilton, a Notary Public, for Marion County, Oregon, on the 8th day of April, 1926, and was recorded at the request of A. B. C. Davenport, on April 13, 1926, in Book 191 of Mortgages, page 208, in the office of the County Recorder of Maricopa County, Arizona. (189-192). Said extension agreement recited that said Lot 2 in Block 3 had theretofore been released from said mortgage. (190).

Also, on the 31st day of March, 1926, James Dean Collins, commonly known as Dean Collins, assigned the above mentioned mortgage to A. B. C. Davenport, by assignment acknowledged before Alexander Hamilton, a Notary Public, for Marion County, Oregon, on April 8, 1926, and recorded at the request of A. B. C. Davenport, in the office of the County Recorder of Maricopa County, Arizona, on April 13, 1926, in Book 12 of Assignments, at page 388. (192-194).

On April 26, 1929, A. B. C. Davenport, as assignee of the above mentioned mortgage, satisfied the mort-

gage of record by marginal release, before O. E. Rogers, Jr., Deputy County Recorder, and at the time of said release, the County Recorder certified by proper notation, that the note secured by the mortgage was produced and cancelled in his presence. (177).

On the 28th day of March, 1928, after the recording of the above mentioned partial satisfaction of mortgage, (188-189), but before the same was fully satisfied of record, (177), Hattie L. Mosher executed a mortgage of said Lot 2, Block 3, Churchill Addition, to Elsie B. Ganz, for the principal sum of $5,000.00. Said mortgage was acknowledged on the 28th day of March, 1928, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 28, 1928, in Book 209 of Mortgages, page 562. (127-131).

On the first day of March, 1929, said Hattie L. Mosher executed another mortgage to the said Elsie B. Ganz, for the principal sum of $6,000.00, on said Lot 2, Block 3, Churchill Addition to the City of Phoenix. Said mortgage was acknowledged on the 6th day of March, 1929, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 6, 1929, in Book 225 of Mortgages, at page 481. (132-136).

On the 16th day of September, 1931, mortgagee, Elsie B. Ganz, filed her complaint in the Superior Court of Maricopa County, Arizona, against Hattie L. Mosher, the mortgagor, and Maricopa County, to foreclose the two mortgages last above mentioned, (108-137). Summons was personally served on the defendant, Hattie L. Mosher, (138), and she appeared and filed a demurrer and an answer to the complaint. (139-142). Decree of foreclosure was entered on the 4th day of January, 1932, awarding the plaintiff a judgment in the sum of $11,000.00, with interest at eight per cent

per annum, until paid, together with costs of foreclosure and costs of suit. (142-146). A special execution was issued and the property sold at sheriff's sale. (146-151). Motion to set aside sale was granted, (151-152). Thereafter, another special execution was issued and another sale held. (153-160). The decree of foreclosure and the second sale at which Mrs. Ganz was the purchaser, were held valid by the Supreme Court of the State of Arizona. *Mosher v. Ganz,* 42 Ariz. 314; 25 Pac. (2d) 555. The time to redeem having expired, Sheriff's Deed was issued to said Elsie B. Ganz on October 27, 1932, which was recorded in the office of the County Recorder of Maricopa County, Arizona, on December 15, 1932. (164-168).

On the first day of May, 1934, said Elsie B. Ganz, a widow, executed a Warranty Deed of said premises to the plaintiffs. The warranty in said deed excepted certain small paving assessments, the rights of O'Connell Brothers, under a lease dated September 17, 1931, made and executed by H. L. Mosher to said O'Connell Brothers, a corporation, for the term of five years from October 1, 1931, and a judgment against Hattie L. Mosher for a small sum in favor of the Salt River Valley Water Users' Association. (169-171).

Plaintiffs, having been in possession under the above mentioned lease from Hattie L. Mosher, remained in possession after receiving the deed from Elsie B. Ganz, and thereafter paid no further rent and claimed and held the said premises as owners under said deed, and paying the taxes thereon as owners. (32, 33, 75, 77).

There appears in the Transcript of Record, a transcript of judgment in the United States District Court, for the District of Arizona, number and docket E-319; judgment debtor, Hattie L. Mosher; judgment creditor,

Julia C. Collins; date of judgment, January 11, 1937; amount of judgment, $900.00, with interest from date of judgment; $34,148.83, with interest at 8% per annum from October 7, 1936, (224); and a special master's certificate of sale dated the 31st day of March, 1939, (225-227), issued under and by virtue of an execution of judgment and order of sale issued out of the United States District Court for the District of Arizona, February 13, 1939 in an action in which Julia C. Collins, plaintiff, recovered judgment against Hattie L. Mosher, defendant, also a Deed of the Special Master, covering Lots 1 and 2, Block 3 of Churchill Addition to the City of Phoenix, dated October 2, 1939, and recorded in the office of the County Recorder of Maricopa County, Arizona, on October 2, 1939, (228-232).

The Transcript of Record also shows Findings of Fact and a judgment showing that the above mentioned sheriff's sale was on a judgment entered against Hattie L. Mosher by default on the mortgage dated the 24th day of February, 1913, executed by Greene and Griffin Real Estate and Investment Company, to J. Gerard, and assumed by the defendant, Hattie L. Mosher in her purchase from Greene and Griffin, as well as in her written assumption of the obligation in the agreement of extension made with Josephine Gerard, and also that the above judgment is based on the principal of said mortgage, together with interest thereon at eight per cent, compounded at semi-annual rests as in the note provided, from the date of the assignment by Josephine Gerard to Julia Mosher Collins, October 7, 1919, to October 7, 1936, the date of the decree of foreclosure, (234-238).

It appears in the Findings of Fact and in the evidence that the plaintiffs and one Van Benschoten, evidently the owner of Lot 1, not involved in this suit, were originally parties to said Collins v. Mosher suit, but were dismissed from the suit, and after such dismissal was made, the suit proceeded against Mrs. Mosher only, by default, (35, 87).

It is evident from the foregoing statement of facts that the plaintiff's title comes through the original deed of J. Gerard to Greene and Griffin Real Estate and Investment Company, and on the face of the record is a perfect chain of title, and that the defendant's claim of title stems from the same deed of J. Gerard to Greene and Griffin Real Estate and Investment Company, (2, 10, 30), and through the mortgage executed by Greene and Griffin Real Estate and Investment Company to J. Gerard, (234-238), and that the break in this title comes from the fact that on March 1, 1920, said mortgage was assigned by Julia Mosher Collins, the then owner thereof, to her husband, James Dean Collins, (183-185), said assignment being made by a power of attorney then held by Hattie L. Mosher, (185-187), and that said mortgage was thereafter released as to Lot 2, Block 3, the property involved in this suit, by partial release by said James Dean Collins, (188-189), and thereafter assigned by said James Dean Collins to A. B. C. Davenport, and thereafter wholly satisfied by said Davenport, (177, 192), and after both of said releases had been made, foreclosure suit was filed thereon by Julia C. Collins, by Coit I. Hughes, her Guardian ad Litem, to foreclose said mortgage, alleging that she was the owner thereof as the heir of her mother, Julia Mosher Collins, (234-239), but palinly not disclosing to the court that said

mortgage had been assigned to her father, James Dean Collins, and twice released by him, (234-239).

It will be noted that if the said Julia C. Collins had been in fact the owner of said J. Gerard mortgage, the same being a prior mortgage, there would have been no occasion for making her a party to the foreclosure of the Ganz mortgages, as in such event, said Ganz mortgages would have been second mortgages, and she would not be affected by the foreclosure suit as said suit and the sale thereunder would operate merely to transfer the interest of the mortgagor subject to said first mortgage, and that for this reason said Julia C. Collins is not interested in the validity of the foreclosure proceedings in the Ganz mortgages. However, said foreclosure proceedings have been upheld by the Supreme Court of the State of Arizona.

Mosher v. Ganz, 42 Ariz. 314;
25 Pac. (2d) 555.

It will be further noted that if Julia C. Collins had been the owner of the Gerard mortgage, and had the right to foreclose the same, when she filed the foreclosure suit in the United States District Court, for the District of Arizona, the plaintiffs were the owners of the mortgaged premises, subject to said mortgage at the time said foreclosure suit was filed, and not being parties to said foreclosure decree, said decree could not have operated to divest their interest in the property and so said foreclosure suit would have been defective, and the most that plaintiff could have done would be to foreclose over again on the ground that she had made a mistake in the first foreclosure.

Williams v. Williams, 32 Ariz. 164;
256 Pac. 356.

This she probably would not have been in a position to do, by reason of the fact that she had knowledge of the rights of the plaintiffs, as is shown by the fact that she originally made them parties, and thereafter dismissed them from the suit, (234-235).

However, in this suit to quiet title, the plaintiffs' claim as owners of the property, and the trial court found that they are such owners, making appropriate findings to that effect, and its findings are not attacked by the appellants in this suit, from which it follows that the judgment in this case must be affirmed. (30-37).

The only ground upon which the trial court could have held that the plaintiffs were not entitled to a decree quieting title in this suit is that the assignment of the Gerard mortgage from Julia Mosher Collins to her husband, James Dean Collins, was in some respect invalid. The only grounds upon which appellants contend that said assignment was not valid are the following:

First, That the power of attorney under which Mrs. Mosher executed said assignment of mortgage was not properly acknowledged, as it purports to be acknowledged by her individually, without an express statement that she acknowledges as attorney in fact. This point has been previously passed upon by this court against appellants' contention, *Collins v. Streitz,* 95 Fed. 2d, 430, 434, and since said decision was based upon this court's interpretation of the law of Arizona, and there is no decision to the contrary in said state, the point must be regarded as settled.

Second, appellants mention the fact that said power of attorney was not recorded until after the death of

the donor in the power. The point is of no significance as recording was not necessary to the validity of the power. *Sec.* 2066, *R. S.* 1913.

Third, appellants contend that the assignment from Julia Mosher Collins to James Dean Collins, her husband, was not delivered prior to the death of Julia Mosher Collins. The first answer to this contention is, the trial court found that it was so delivered, and said finding is not attacked in this court, and therefore must stand, (33-34). However, said finding of the trial court is supported by legal presumptions not rebutted by satisfactory evidence, and could not be set aside by this court even if it had been properly attacked.

The acknowledgment of an instrument raises a presumption of its delivery as of the date of the instrument.

Collins v. Streitz, 95 Fed. (2d) 430, 438 (9th Cir.)
1 Corpus Juris Secundum, Sec. 26, p. 810
1 Corpus Juris, Sec. 81, p. 785
Hiddleson v. Cahoon, 214 Pac. 1042
16 American Jurisprudence, Secs. 387, 388, p. 657
Gibson v. Gibson, 217 N. W. 852
Tucker v. Glew, 139 N. W. 565
Sasseen v. Farmer, 201 S. W. 39, 41
Wilmarth v. Hill, 226 N. W. 557

Under the laws of Arizona an assignment of mortgage is required to be recorded.

Newman v. Fidelity Savings & Loan Assn., 14 Ariz. 354; 128 Pac. 53
Buerger Bros. Supply Co. v. El Ray Furn. Co., 45 Ariz. 1

The certified copy of an instrument required to be recorded is admissible in evidence without further proof.

Sec. 4456, Revised Statutes of Ariz. 1928.

While the presumption of delivery as of the date of the instrument may be rebutted by satisfactory evidence, in this case the only testimony to the contrary is that of Hattie L. Mosher, one of the defendants. This testimony is far from satisfactory, (82-107). This court will probably find the testimony more understandable by reading the opinions of the Supreme Court of Arizona in the cases of,

Collins v. Collins, 46 Ariz. 485; 52 Pac. (2d) 1169, and
Collins v. Streitz, 47 Ariz. 146; 54 Pac. (2d) 264, Appeal dismissed, 298 U. S. 640; 80 Law ed. 1373.

The court may also be enlightened by referring to its own opinions in the following cases:

Collins v. Dye, 94 Fed. (2d) 799, Certiorari denied, 305 U. S. 601
Collins v. Finley, 94 Fed. (2d) 935, Certiorari denied, 305 U. S. 618
Collins v. Streitz, 95 Fed. (2d) 430, Certiorari denied, 305 U. S. 608
Collins v. Mosher, 91 Fed. (2d) 582
Collins v. Mosher, 115 Fed. (2d) 900, Certiorari denied, 313 U. S. 581
Lount v. Mosher, 115 Fed. (2d) 903; 313 U. S. 581
Collins v. Finley, 65 Fed. (2d) 625

It is evident that the part played by Hattie L. Mosher, defendant's witness in this case in the above litigation, is not a minor part.

The trial court made a Conclusion of Law, (36) to the effect that Julia Mosher Collins, the mother of the defendant, Julia C. Collins, became estopped prior to her death from questioning the assignment and transfer of the mortgage under her power of attorney as against the plaintiffs who relied on the records and purchased the mortgaged property in good faith and for value without knowledge of any claim of mortgage thereon, by reason of having placed said power of attorney and said mortgage in the control of her mother and that said estoppel extends to the plaintiff as she claims by inheritance from her mother. There can be no question about the soundness of this conclusion. The assignment was executed some two months before Julia Mosher Collins died. It is the duty of an agent to communicate to his principal every fact affecting the transaction entrusted to his care which comes to his knowledge in the course of or during its performance, and this duty in an action between the principal and the adverse party is conclusively presumed to have been obeyed. Hence, it is conclusively presumed that Mrs. Mosher communicated the fact of the execution of this assignment to her daughter, who was her principal, and hence, the daughter, making no objection to the transaction prior to her death, clearly approved or ratified the assignment.

Pringle v. Modern Woodmen of America,
107 N. W. 756
O'Connor v. Knights & Ladies of Security,
L. R. A. 1917 B, pages 897, 906.

Another authority cites the principle as follows:

"The doctrine of constructive notice, arising from an agent's knowledge, is based upon the principle, that it is the duty of an agent to com-

municate facts material to the interests of his principal, of which he has notice or knowledge arising from or connected with the subject matter of the agency; and upon grounds of public policy it is presumed he has communicated such facts to his principal; but if he has not, still the principal, having intrusted the agent with the particular business, the other person has the right to deem the agent's knowledge obligatory upon his principal; otherwise the neglect of the agent might operate most injuriously to the rights and interests of such person."

3 Corpus Juris Secundum, page 195, Sec. 262.

Under the above principle, Julia Mosher Collins was charged with knowledge of the execution of the assignment in question some two months prior to her death, and hence, she must be held to have either approved the assignment in advance or ratified it after it was made and before her death.

Julia Mosher Collins gave a power of attorney to Mrs. Mosher, her mother, which placed it in Mrs. Mosher's power to handle and control the mortgage as she saw fit. If Mrs. Mosher abused that confidence, Julia Mosher Collins, who trusted her, must stand the loss as against the plaintiffs who are innocent persons dealing with the property in good faith and for value. (36, 74-76)

19 American Jurisprudence, Secs. 67-69, p. 695, 698
Kearby v. Western States Securities Co., 31 Ariz. 104; 250 Pac. 766
21 Corpus Juris, Secs. 176, 180, p. 1172, 1176
Klein v. Munz, 286 Pac. 112

The quasi estoppel of Julia Mosher Collins is binding upon her daughter, who takes as one of her heirs.

19 American Jurisprudence, Sec. 155, p. 811
In re Davis Estate, 101 Pac. (2d) 761, 764
In re Davis Estate, 102 Pac. (2d) 545

Appellants argue that the assignment of mortgage from Julia Mosher Collins to James Dean Collins, her husband, was void because her attorney in fact, Hattie L. Mosher, had an interest in the mortgage. The difficulty with this argument is that it is not supported by the facts. The principle that authority to the agent to do acts for his principal's benefit does not authorize him to do such acts where his own interest conflicts with his duty to his principal, is too well established to be questioned, but the record in this case shows that Mrs. Mosher had no interest in the mortgage in question. The mortgage was the property of her daughter, Julia Mosher Collins. It was simply a lien upon land which Mrs. Mosher owned. Mrs. Mosher's interests were not affected by an assignment of this mortgage from her daughter to her son-in-law. Presumably the son-in-law would be more insistent upon collection than the daughter. The assignment recites receipt of the full amount of the mortgage as consideration for the assignment. Whether or not she received this is immaterial so far as the appellees are concerned. The Rule applicable to this situation is well stated in 3 Corpus Juris, Secundum, pages 184, 185, Section 253, as follows:

> "The principal is not bound by contracts made by his agent within his general scope of authority in which the agent has an individual interest adverse to that of the prncipal when the contracting third party has notice of such interest; but the

rule is otherwise if the third person is not charged with such notice.

"As a principal is not bound by the contract of his agent beyond the scope of his actual apparent authority, it is an a fortiori conclusion that contracts made by his agent in his name without authority and for the agent's benefit and to his individual interest have no greater capacity for creating liability for the principal. In addition to this obvious application of the general doctrine of agency, the principal is not bound by contracts, made by his agent within the scope of the agent's authority but in the furtherance of the agent's individual interests to the knowledge of the other party to the contract, particularly where the contract was made without the principal's knowledge and consent. The rule applies equally whether the notice that the agent is acting for his own benefit rather than that of his principal appears from the face of the contract itself, or from the nature of the transaction, or from the constructive notice of the record books. * * * On the other hand, it is to be borne in mind that it has been the tendency of courts to protect those dealing in good faith with the unfaithful agent, who, authorized to handle the property of his principal, has misapplied it, where it appears that the agent has the actual power to perform the act, not for his own, but for the principal's benefit. Accordingly where the third party acted in good faith and with no notice of the fact that the agent was acting for his own benefit, the principal cannot avoid liability on contracts made with the agent's authority."

See *Union Trust Co. of Spokane v. McAllister Warehouse Co.,* 259 Pac. 16; 145 Wash. 125.

In this case the appellees purchased the property in good faith and were not charged with notice of anything that Mrs. Mosher may have done, except what

appeared from the record books. What appeared there was simply that Mrs. Mosher under the authority of her Power of Attorney, which this court in another case characterizes as almost unlimited, assigned the mortgage in question for the full face value thereof, the assignment being from wife to husband. Obviously, this gave no indication that Mrs. Mosher might benefit by the transaction. Certainly, it cannot be contended that those seeing such an assignment on the record books must take notice that Mrs. Mosher and her son-in-law might be conspiring to cheat Julia Mosher Collins or her daughter, out of their property.

The rule is stated in, 1 *Restatement of the Law of Agency,* page 403, Sec. 165, as follows:

> "A disclosed or partially disclosed principal is subject to liability upon a contract purported to be made on his account by an agent authorized to make it for the principal's benefit, although the agent acts for his own or other improper purpose, unless the other party has notice that the agent is not acting for the principal's benefit."

There being no decisions in Arizona to the contrary, the above quotation from the Restatement of the Law of Agency is the law of Arizona, the Supreme Court of the State having so declared in several cases.

Lightning Delivery Co. v. Matteson, 45 Ariz. 92, 99; 39 Pac. (2d) 938
Smith v. Normart, 51 Ariz. 134, 143; 75 Pac. (2d) 38
Cole v. Arizona Edison Co., 53 Ariz. 141, 144; 86 Pac. (2d) 946.
Maricopa Co. v. Arizona Citrus Land Co., 55 Ariz. 234, 239; 100 Pac. (2d) 587.

Waddell v. White, 56 Ariz. 525, 527;
109 Pac. (2d) 843.

It is clear from all the authorities that this case does not come within the rule of an agent's misusing authority granted to him by a principal for the agent's own benefit, but comes within the principle of where an authority is granted by the principal to an agent and a bona fide purchaser for value purchases property, (34, 36, 74-76) relying on the performance by the agent of authority that has been duly granted to him without knowledge that the agent has used the authority for his own benefit.

The trial court also found that the plaintiffs took possession of said premises under their warranty deed from Mrs. Ganz, and ever since have been in possession thereof, claiming title as against the whole world, and that such possession has been a visible and open and exclusive appropriation of said premises, and plaintiffs since said date have paid taxes upon said premises, (32-33). The date of the Warranty Deed to the plaintiffs is May 1st, 1934, and it was recorded on the same day, (169-172). Consequently, plaintiffs are entitled to claim title by adverse possession under Section 29-104, Ariz. Code Ann., 1939, formerly Sec. 2052, Revised Code of Ariz., 1928. It is true that Mrs. Mosher's testimony tends to show that Julia C. Collins has not been twenty-one years of age for five years last past, but in view of the evasiveness of her testimony and her interest in the case, we do not believe that the

defendants have met the burden of proof to show the statute did not run against Julia C. Collins by reason of her minority.

We respectfully submit that the judgment of the trial court should be affirmed.

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